

STATE OF NORTH CAROLINA
COUNTY OF CHEROKEE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 18-CVS-_____

BRIAN HOGAN, both on his own behalf and
as representative of all unnamed class
members who are similarly situated;
BRIAN HOGAN, as parent and next friend of
H.H., both on her own behalf and as a
representative of all unnamed class members
who are similarly situated

Plaintiffs,

v.

CHEROKEE COUNTY;
CHEROKEE COUNTY DEPARTMENT OF
SOCIAL SERVICES;
SCOTT LINDSAY, in both his individual
capacity and his official capacity as attorney
for Cherokee County Department of Social
Services; CINDY PALMER, in both her
individual capacity and her official capacity as
Director of Cherokee County Department of
Social Services;
DSS SUPERVISOR DOE #1, both in his/her
individual capacity and his/her official
capacity as an employee of Cherokee County
Department of Social Services; and
DSS SOCIAL WORKER DOE #1, both in
his/her individual capacity and his/her official
capacity as an employee of Cherokee County
Department of Social Services;

Defendants,

COMPLAINT
(Petition for Class Certification)
(Jury Trial Demanded)

NOW COME the Plaintiffs, by and through undersigned counsel, and allege the following Claims for Relief seeking recovery of damages and for injuries incurred as a proximate cause of the acts and omissions of Defendant pursuant to N.C.R. Civ. P. 1, 3, 4, 8, and 9, arising

from the conduct of the Defendants in their official and individual capacities, as described more particularly in this complaint:

INTRODUCTION

1. This action arises from multiple events, transactions and occurrences referenced and described in this complaint, including unlawful Custody and Visitation Agreements (hereinafter “CVA”), unlawful Powers Of Attorney (hereinafter “POA”) and other similarly substantive documents and agreements that remove a minor child from his/her proper custodial parent or court-appointed foster parent, as well as the impact of such agreements affecting the parent/child relationship of other persons and their children. Copies of representative CVAs are attached as Exhibit A; a copy of a representative POA is attached as Exhibit B.
2. Plaintiff Brian Hogan (hereinafter “Hogan” or “Plaintiff”) brings this action for damages and a redress of harms suffered by himself, as well as the damages and harms suffered by all other members of a class of similarly-situated parents, who have been damaged and harmed as the result of like conduct by Defendant Cherokee County Department of Social Services (hereinafter “CCDSS”), their agents and employees, who are state actors as defined by law.
3. Hogan also brings this action as parent and next friend of H.H., his biological child who is a minor, for damages and redress of harms suffered by H.H., as well as the damages and harms suffered by all other members of a class of similarly-situated minor children who have had been damaged and harmed as the result of like conduct by Defendant CCDSS, their agents and employees, who are state actors as defined by law.

PARTIES AND JURISDICTION

4. Plaintiff Hogan brings this action for redress of harms suffered himself as well as the harms suffered by all other members of a class of similarly situated parents, who have had been harmed as the result of like conduct by Defendant Cherokee County Department of Social Services (hereinafter “CCDSS”), their agents and employees, who are state actors as defined by law.
5. This action arises from a series of discrete events, transactions and occurrences referenced and described in this complaint, including the pattern and practice of CCDSS using unlawful CVAs and POAs and other similarly substantive agreements to remove minor children from their proper custodial parent, as well as the effects such agreements have on the parent/child relationship of other persons and their children.
6. The named Plaintiff is a citizen and resident of Cherokee County, North Carolina.
7. All other unnamed class members were, at the times of the events giving rise to this litigation, either citizens and residents of Cherokee County, North Carolina or, by the actions of the Defendants as more fully described below, had significant contact with Cherokee County, North Carolina.
8. Defendant Cherokee County (hereinafter “Cherokee County”) is a political subdivision of the State of North Carolina, organized and governed by the laws of the State of North Carolina.
9. Defendant CCDSS is an agency organized under the laws of the State of North Carolina and operated pursuant to administrative regulations promulgated by the North Carolina Department of Health and Human Services; its activities and operations are carried out by agents and employees of Cherokee County.

10. Defendant Scott Lindsay (hereinafter “Lindsay”) is and has been at all relevant times the Department of Social Services (hereinafter “DSS”) attorney for Cherokee County, an agent and employee of Cherokee County and CCDSS.
11. Defendant Lindsay is a government actor as it relates to the allegations set forth herein.
12. Defendant Lindsay exercised personal and professional deliberation, made decisions and exercised personal and professional judgment as set forth herein.
13. Defendant Lindsay has been trained for over 18 years in the rules, regulations, policies and procedures of the Department of Social Services as promulgated by the NCDHHS and the associated laws of the state of North Carolina. Defendant Lindsay, as an agent of and policy maker for CCDSS, is statutorily obligated to act in the best interest of each minor child and to ensure each child’s health and safety at all times when acting in regard to CCDSS or its duties. He is further obligated to follow all the laws of the State of North Carolina at all times.
14. Defendant Lindsay has been continuously employed as both the attorney for Cherokee County and CCDSS simultaneously for many years.
15. Defendant Cindy Palmer (hereinafter “Palmer”) is the director of CCDSS and has been an agent or employee of Cherokee County at all relevant times. Defendant Palmer is a health and community worker.
16. Defendant Palmer has been Director of CCDSS for approximately two years and previously was the interim director. Her predecessors as Directors were agents or employees of Cherokee County at all relevant times, and were health and community workers for CCDSS.

17. Defendant Palmer holds a public office created by state statute whereby she exercises a position of power and discretion, as allowed by law as set forth in N.C. Gen. Stat. § 7B-100 *et. seq.*
18. Defendant Palmer was trained in the rules, regulations, policies and procedures of the Department of Social Services as promulgated by the NCDHHS and the associated laws of the state of North Carolina after assuming her responsibilities and duties.
19. Defendant Palmer exercised personal and professional deliberation, made decisions and exercised personal and professional judgment as set forth herein.
20. Defendant Palmer, as director of CCDSS, has both the authority and responsibility to set and oversee all policies and practices of CCDSS, including those complained of in this action.
21. As Director of CCDSS, Defendant Palmer had a duty of her office to, at all times, act in the best interest of each minor child upon whom CCDSS takes action.
22. Defendant Palmer is an official policy maker for Cherokee County.
23. Defendant Palmer is a public officer as defined by law.
24. Defendant CCDSS Supervisor Doe #1, and all other unnamed CCDSS supervisors, are and have been at all relevant times agents and employees of Cherokee County, whose positions of employment include the authority and responsibility to carry out the policies of Defendants Cherokee County, CCDSS, and Palmer. They also have the responsibility and authority to oversee the activities of CCDSS social workers. CCDSS Supervisor Doe #1 is and all other CCDSS Supervisors are health and community workers.
25. Defendant Social Worker Doe #1, and all other unnamed CCDSS social workers, are and have been at all relevant times agents and employees of Cherokee County, whose positions

of employment include the duty of carrying out the policies and practices of Defendants Cherokee County, CCDSS, Palmer, and Lindsay. Social Worker Doe #1 is and all other CCDSS Social Workers are health and community workers.

26. The defendant social workers and supervisors were state actors as it relates to the allegations as set forth herein.
27. The defendant social workers and supervisors exercised personal and professional deliberation, made decisions and exercised personal and professional judgment as set forth herein.
28. The identities of all Defendants who are or have been social workers, supervisors, directors, health and community workers, and others who took part in, were involved in, or had knowledge of the process of removing minor children from proper custodial parents without lawful authority and in derogation of the rights and privileges of those parents and minor children, have yet to be identified, and will be identified through discovery during both the class certification process and the merits of this action. Plaintiffs reserve their right to amend this Complaint to add those persons as Defendants to this case as they become known.
29. Each and every agent and employee of CCDSS, including each and every past and present social worker, supervisor, attorney, and director, is obligated to act, at all times, in the best interest of each minor child upon whom CCDSS takes any action.
30. Defendants' Lindsay and Palmer are citizens and residents of Cherokee County, North Carolina.
31. The unlawful acts and/or omissions which are the subject of this action took place in Cherokee County, North Carolina.

32. Venue is proper in the Cherokee County, North Carolina pursuant to N.C. Gen. Stat. §§ 1-77 and 1-82.
33. The amount in controversy exceeds \$25,000.00, and therefore the Superior Court is the proper division of the General Court of Justice for trial pursuant to N.C. Gen. Stat. § 7A-243.
34. Defendants are not entitled to absolute, prosecutorial, or governmental immunity because, *inter alia*, the actions complained of herein were not undertaken during the process of prosecuting any claim of abuse, neglect, or dependency in a proceeding before the District Court of Cherokee County.
35. Alternatively, all of the Defendants and those yet to be known have waived any governmental immunity that may arguably apply, pursuant to N.C. Gen. Stat. § 153A-435 by the purchase of insurance and/or participation in the North Carolina Association of County Commissioners Risk Management Pool, which provides coverage for the acts and omissions alleged against the Defendants herein.
36. Each Claim for Relief against each Defendant is brought against that Defendant in both his/her individual and official capacities
37. Each Defendant, both those known and yet to be identified through discovery in this action, committed the acts complained of herein while acting in both their individual and official capacities

FACTS RELEVANT TO PLAINTIFF HOGAN'S CLAIMS FOR RELIEF

38. Plaintiffs adopt and incorporate by reference all allegations of this Complaint as if fully set out herein.

39. Plaintiff Hogan is the biological father of a minor child, H.H., born January 16, 2006. They both reside in Cherokee County, North Carolina.
40. On or about September 14, 2015, CCDSS received a report of suspected neglect involving Hogan, H.H., and H.H.'s mother, Amanda Edmondson. Amanda Edmondson is a citizen and resident of Cherokee County, North Carolina.
41. CCDSS conducted an investigation into the report and ultimately filed a juvenile petition alleging abuse, neglect, and/or dependency of H.H. in 2015. This juvenile petition is contained within Cherokee County File Number 15-JA-73.
42. The District Court of Cherokee County ultimately rendered an order of adjudication and disposition on January 14, 2016, and said order was signed and entered on April 1, 2016.
43. The April 1, 2016 Order was entered by the Honorable Tessa Sellers, District Court Judge presiding, and placed custody of the minor child with Plaintiff Hogan. The decision to return H.H. to the custody of Hogan was entered after hearing with the consent of CCDSS and H.H.'s guardian ad litem. The April 1, 2016 order (hereinafter the "Judge Sellers Order") is attached as Exhibit C.
- a. During the course of the litigation arising from the Juvenile Petition filed in Cherokee County 15-JA-73 (*In re H.H.*), Hogan was represented by court-appointed counsel Melissa Jackson.
 - b. CCDSS, Defendant Lindsay, and other Defendant social workers and health and community workers participated in and were parties to *In re H.H.*
44. Defendant Palmer was the director of CCDSS during the investigation and litigation of the juvenile action involving Hogan and H.H. She exercised full supervisory authority and had final authority over all decisions, policies, and actions of CCDSS and its employees

during the investigation leading to the filing of *In re H.H.* and the subsequent juvenile court proceedings.

45. Further, Defendant Palmer was the director of CCDSS and exercised full supervisory authority and had final authority over all decisions, policies, and actions of CCDSS and its employees at all times relevant to the allegations contained within this Complaint.
46. Defendant Lindsay represented CCDSS during the proceedings of *In re H.H.*, and, upon information a belief, provided advice and guidance to CCDSS during the investigation leading to the filing of *In re H.H.*.
47. Further, Defendant Lindsay has represented CCDSS and provided advice and guidance to CCDSS regarding all its investigations and practices during all times relevant to the allegations contained within this Complaint.
48. On or about November 21, 2016, CCDSS again contacted Hogan regarding concerns involving Hogan and H.H. An agent of CCDSS requested that Hogan come to CCDSS's office.
49. Hogan attended a meeting at CCDSS's office. Present at this meeting were Hogan and Laurel Smith, a social worker for CCDSS.
50. During this meeting, CCDSS by and through its social worker Laurel Smith, requested that Plaintiff agree to and sign a CVA, which purportedly removed custody of H.H. from Plaintiff and placed physical and legal custody of the minor child with the minor child's paternal grandfather, Warren Hogan.
51. Warren Hogan (hereinafter "Grandfather") is the paternal grandfather of the minor child. Grandfather is a citizen and resident of Cherokee County, North Carolina.
52. Plaintiff Hogan has learning disabilities and is unable to adequately read and write.

53. CCDSS was aware of Hogan's disabilities at all relevant times.
54. CCDSS agents made a number of statements to Hogan at the time Hogan was presented with the CVA, which included:
- a. That this CVA was entered in lieu of court involvement;
 - b. That Hogan would be subjected to adverse legal proceedings and other consequences if he did not sign the CVA;
 - c. Other false threatening, and coercive statements, including, upon information and belief, that if Hogan did not acquiesce to the CVA:
 - i. Your child will be adopted out and you will never see her again.
 - ii. Your child will be placed in foster care and you won't see her.
 - iii. Your child will be placed in a location where you will have little or no contact with her.
55. Plaintiff Hogan was not represented by counsel at the time of the November 21, 2016 meeting. His appointed counsel from *In re H.H.* had been released from further representation following entry of the Judge Sellers Order.
56. Plaintiff Hogan was neither advised nor given an opportunity to contact independent legal counsel when confronted with and unlawfully pressured to sign the unlawful CVA.
57. CCDSS never contacted Hogan's prior attorney regarding the meeting or the CVA.
58. Under the provisions of N.C. Gen. Stat. § 7B-100 *et seq.*, Plaintiff Hogan was entitled to counsel prior to any adversarial event that would result in him losing custody.
59. On November 21, 2016, Plaintiff Hogan, because of the fraud, coercion, and misrepresentations made to him by CCDSS and its agents and employees described herein, agreed to and signed the CVA purporting to remove H.H. from Hogan's custody

and placing her in the custody of Grandfather. A true and accurate copy of the CVA is attached as Exhibit D.

60. Laurel Smith, who was a social worker for CCDSS at the time, effected this CVA at the direction of and with the approval of Defendants Lindsay and Palmer.
61. As a result of the Hogan CVA, H.H. was removed from Plaintiff's care, custody, and control and placed with the paternal grandfather in direct violation of the Judge Seller's Order.
62. As a result of the CVA and the unlawful conduct of CCDSS, its agents and employees, Hogan was not allowed to see, visit, care for, or otherwise interact with H.H. If Hogan and H.H. had any contact at all, it was *de minimis*, permitted no meaningful contact, and did not permit Hogan to exercise his rights as a parent to be a parent to his child.
63. On December 4, 2017, Plaintiff Hogan attempted to lawfully obtain his daughter H.H. by contacting the Cherokee County Sheriff's Office.
64. Notably, Cody Williams, a deputy of the Cherokee County Sheriff's Office, reviewed the Judge Sellers' Order and concluded that it was not a valid Court Order. On information and belief, Defendant Lindsay was either directly or indirectly involved in Deputy Williams reaching this decision.
65. On December 6, 2017, Plaintiff attempted to pick up the minor child from school. He had in his possession a certified true copy of the Judge Sellers Order.
66. School officials would not release the minor child to Plaintiff.
 - a. School officials contacted the Andrews Police Department and the paternal grandfather.
 - b. Paternal grandfather appeared with a copy of the unlawful CVA.

- c. Officers prevented Plaintiff from retrieving the minor child upon the threat or arrest.
 - d. Upon information and belief, Defendant Lindsay was either directly or indirectly involved in enforcing the unlawful CVA, and denying Hogan access to and custody of H.H.
67. On December 7, 2017, attorney Melissa Jackson filed on Plaintiff's behalf a motion in Cherokee County 15-JA-73 to enforce the Judge Sellers Order.
68. On December 13, 2017, the Honorable Monica H. Leslie heard attorney Melissa Jackson's motion to enforce the Judge Sellers Order.
69. When asked by the Court what legal authority DSS had for the execution of the CVA, Defendant Lindsay admitted that there was, "none." (Exhibit ?)
70. Defendant Lindsay further informed the Court, at that time, that he was aware of 20 of such agreements drafted by himself or at his direction.
- a. At all relevant times, Defendant Lindsay was operating within the scope and authority of his position as the attorney for CCDSS.
 - b. At all relevant times, CCDSS, by and through its employees was aware of Defendant Lindsay's conduct. As a direct and proximate result of their deliberate indifference, CCDSS effected the loss and deprivations referenced in this complaint and the policy, pattern, and did nothing to object or intervene.
 - c. On at least one occasion, a CCDSS social worker, Katie Brown, inquired about whether the CVAs or substantively similar agreements were legal, and Defendant Lindsay assured her that such agreements were legal and enforceable.

- d. Defendant Lindsay's conduct was grossly negligent, intentional, willful, and without legal authority and done with reckless disregard of the plaintiffs or their constitutionally protected rights.

71. Judge Leslie entered an Order on December 13, 2017 holding that the CVA was not a valid legal document, not enforceable or binding, is null and void, and the previous order entered by Judge Sellers was valid and full legal custody and control of H.H. was to be returned to Plaintiff Hogan.

72. After entering her order in regard to Hogan's CVA on December 13, 2017, Judge Leslie reported CCDSS and Defendant Lindsay to the N.C. Department of Health and Human Services (hereinafter "DHHS").

73. Following Judge Leslie's report to DHHS regarding CCDSS and Defendant Lindsay's actions, the DHHS became aware of the practice of entering into CVAs, POAs and other such agreements as used in Plaintiff's case.

74. DHHS advised in a December 20, 2017, letter to all county directors of social services that *"facilitating such private custody agreements without the oversight of the Court falls outside of both law and policy."* A true and accurate copy of this letter is attached as Exhibit E.

75. As a proximate result of Defendants' conduct, Hogan suffered sadness, pain and emotional distress as:

- a. Hogan was denied the opportunity to provide care, love, and affection to minor child.
- b. H.H. lost the services, care, protection, and assistance of Hogan.

- c. Hogan and H.H. lost society, companionship, comfort, guidance, kindly offices, and advice of each other.

76. Plaintiff Hogan's damages are more than \$25,000.00.

FACTS SPECIFIC TO UNNAMED CLASS MEMBERS' CLAIMS FOR RELIEF

77. Plaintiffs adopt and incorporate by reference all allegations of this Complaint as if fully set out herein.

78. A CVA was used not only in Hogan's case, but also in numerous other cases by CCDSS with modifications being made as necessary to account for the individual circumstances of each child and the placement that CCDSS had chosen.

79. Upon information and belief:

- a. The Hogan CVA was one of several that Ms. Smith and other agents and employees of CCDSS effected for CCDSS at Defendant Lindsay's direction and approval while employed by and acting on behalf of CCDSS as director, supervisor, social worker or similarly situated person.
- b. At various times, these documents were referred to as "Custody and Visitation Agreements," "CVAs," "Custody Agreements," "Voluntary Placement Agreements," "VPAs," Powers of Attorney "POAs", or such similar terms.
- c. Courtney Myers, who previously worked for the CCDSS for approximately three years, estimates that she or co-workers completed between 30 and 50 CVAs.
- d. CVAs and POAs and other similar documents were regularly used as an option when Defendant Lindsay did not feel the case was "serious enough" for Court involvement.

- e. Defendant Lindsay would send and receive the draft CVA to and from CCDSS social workers to input the particular factual information.
 - i. For example, social workers Katie Brown, Laurel Smith, Joyce Bernier, and Courtney Myers, would receive the draft CVA from Defendant Lindsay and input the information applicable to a particular case (for example, the names of Plaintiff, grandfather, minor child, and minor child's date of birth), and send the draft CVA via email back to Defendant Lindsay for his approval.
 - ii. All of the above-referenced social workers effected similar agreements only with the approval of Defendant Lindsay and/or their social worker supervisor and/or the Director of CCDSS.
 - iii. All knowledge of Defendant Lindsay, as well as the social workers and supervisors, are imputed to the Director of CCDSS at relevant times.
- f. These CVAs were sent to and from Defendant Lindsay's Cherokee County-provided and private email addresses since 1999.
- g. Ms. Brown, as well as several other social workers, did question the legality and validity of the CVAs to both the Defendant Lindsay and CCDSS Directors over the years.
- h. Defendant Lindsay and/or social worker supervisors and/or CCDSS Directors advised them that the use of CVAs was legal and permissible.
- i. CCDSS entered into CVAs and/or POAs frequently.
- j. Upon information and belief, CCDSS created, and induced parents to enter into dozens, if not more (possibly several hundred) CVA's, all of which were created,

effected, and enforced by CCDSS, and its agents and employees including Defendant Lindsay.

- k. No CVAs were done without the approval, guidance and participation of Defendant Lindsay and/or the Director of CCDSS.
- l. Some of these agreements have been placed in closed court files in the Cherokee County Courthouse, by Defendant Lindsay or agents/employees of CCDSS. This placement was done at the direction of either a director, defendant Lindsay, CCDSS supervisor, or other employee with supervisory authority.
- m. Defendant Palmer, the CCDSS Director, and persons who held the public office of Director of CCDSS prior to her are and were aware of the CVAs, POAs and similar documents and approved of them, both expressly and tacitly.
- n. Use of the CVAs, POAs, and substantively similar agreements to remove minor children from their parents without court involvement was an official policy of CCDSS. Use of the CVAs, POAs, and substantively similar agreements to remove minor children from their parents without court involvement was an accepted custom and practice of CCDSS, known to its policy makers and accepted and encouraged by the policy makers.
- o. On multiple occasions, the decision to proceed with a CVA was made in consultation and agreement between Defendant Palmer and CCDSS employees.
- p. On multiple occasions, the decision to proceed with a CVA was made in consultation between Defendant Lindsay and CCDSS employees during case review, case staffing, or other times.

- q. These agreements were used to achieve CCDSS's goal of removing minor children from lawful custody when they lacked sufficient evidence or legal basis to file a petition or seek non-secure custody of a minor child pursuant to N.C. Gen. Stat. § 7B-100 *et. seq.*,
 - r. CVAs were used to interfere with parental relationships in cases in which CCDSS and Defendant Lindsay knew such interference was not legally justified. Moreover, CVAs and POAs and other similar documents were used to avoid judicial oversight into the activities of CCDSS. Further, CVAs and POAS and other similar documents were utilized to avoid scrutiny by the Court and parents' counsel.
 - s. CVAs were used to avoid, and in fact did result in, CCDSS not providing any follow-up care (including *inter alia* medical care) that CCDSS is required, pursuant to N.C. Gen. Stat. § 7B-100 *et seq.*, to provide children who are placed in an out-of-home placement.
- 80.** In a separate action seeking a Declaratory Judgment, Judge Sellers, in open Court, entered an Order on February 28, 2018, finding *inter alia*, that all CVAs and like documents including POA's are void *ab initio*. A true and accurate copy of this Order is attached as Exhibit F.
- 81.** After entering her order in regard to Hogan's CVA on December 13, 2017, Judge Leslie reported CCDSS and Defendant Lindsay to the N.C. Department of Health and Human Services (hereinafter "DHHS").

82. Following Judge Leslie's report to DHHS regarding CCDSS and Defendant Lindsay's actions, the DHHS became aware of the practice of entering into CVAs, POAs and other such agreements as used in Plaintiff's case.
83. DHHS advised in a December 20, 2017, letter to all county directors of social services that "facilitating such private custody agreements without the oversight of the Court falls outside of both law and policy." A true and accurate copy of this letter is attached as Exhibit E.

CLASS OF UNNAMED PLAINTIFFS

84. Plaintiffs adopt and incorporate by reference all allegations of this Complaint as if fully set out herein.
85. CCDSS has utilized CVAs, POAs or substantively similar agreements to unlawfully coerce parents into surrender of custody of their children without proper process or Court oversight for upwards of two decades.
- a. Upon information and belief, prior directors, prior supervisors, prior social workers, as well as others still working with CCDSS (including health care and community workers) have caused parents to sign CVAs, POAs, or substantively similar agreements without court involvement or oversight, thereby interfering with the parental relationship between that of parent and child, violating the constitutional and statutory rights of the parents and minor children.
 - b. The Defendants lacked a compelling governmental interest as it relates to the use of CVAs, POAs and similar documents in obtaining signatures from all class plaintiffs.

- c. Neither Defendant Lindsay, nor Defendant Palmer, nor any CCDSS supervisor, nor CCDSS social worker, health or community worker (or their predecessors at times relevant) reviewed the placement as required by N.C. Gen. Stat. § 7B-100 *et. seq.*, or check on the health safety or welfare of any minor child removed pursuant to CVAs or substantively similar agreements or otherwise afford the requisite rights of the Plaintiffs.
 - d. Other plaintiffs' attorneys (representing respondent parents in abuse, neglect, dependency proceedings) similarly situated as Hogan's court appointed attorney, were never told about CVAs involving their clients or their client's minor children.
- 86.** Defendants' actions caused Plaintiffs and Unnamed Class Members to be deprived of fundamental rights, particularly, a parental relationship with their biological children, in violation of substantive and procedure due process of the law and in violation of all Plaintiffs' equal protection rights.
- 87.** The Defendants, collectively and individually, represented and carried out CCDSS policy and procedures and represented to all Plaintiffs they were acting in accordance with N.C. Gen. Stat. § 7B-100 *et. seq.*, when in fact they were acting contrary to law.
- 88.** The Defendants' conduct was the result of the policy decisions of policy makers acting on behalf of Cherokee County.
- 89.** Defendant Palmer and all other CCDSS Directors have the authority to set official policy, training, and directives including the use of the CVAs, POAs, and other substantively similar "agreements," and, in fact, did so.

90. Defendant Palmer and all other CCDSS Directors have the authority and responsibility to oversee the activities and behaviors of CCDSS employees and their agents, including the use of the CVAs, POAs and other substantively similar “agreements.”
91. The use of the CVAs, POAs and other substantively similar “agreements” was an official custom, practice, and policy of CCDSS and Cherokee County.
92. The use of the CVAs, POAs and other substantively similar “agreements” were also the result of accepted customs, practices, and conduct by Cherokee County.
93. At no time after the removal of the Plaintiffs’ children did Defendant Lindsay, Defendant Palmer, any CCDSS supervisor, CCDSS social worker or agent review the placement, as required by N.C. Gen. Stat. Chapter 7B, or check on the health, safety, or welfare of the minor children, nor did they provide the health-care services required by law. In fact, CCDSS provided no follow-up services required by law for children placed out of the home.
94. The Defendants’ conduct has harmed a class of persons, who are persons who were the parents of children, who were unlawfully coerced into signing a CVA, POA or substantively similar agreement (“Class Parents”).
- i. Plaintiff Brian Hogan is member of this class.
 - ii. Upon information and belief, at the time of this filing, there are in excess of 50 members of this class, one of whom is the named Plaintiff, Brian Hogan. The remaining members of this class are currently unknown but will be ascertained through discovery.
 - iii. Plaintiff Brian Hogan has a personal interest in the issues of law and fact in this case, including but not limited to:

1. Being unlawfully coerced into surrendering custody of his minor child by CCDSS in violation of his constitutional rights.
 2. Other factual allegations, as set forth *supra*, and claims for relief, as set forth *infra*, all of which are incorporated by reference as though fully set forth herein.
- iv. These issues of fact and law in which Plaintiff Brian Hogan has a personal interest are common with the class.
 - v. These common issues of fact and law predominate over issues affecting only individual class members.
 - vi. With the total number of class members exceeding 50, the class is so numerous that it would be impracticable to bring all class members before the court.
 - vii. Plaintiff Hogan will adequately represent the members of the class.

95. The Defendants' conduct has harmed a second class of persons, who are minor children who were unlawfully taken away from their parents by use of unlawful and coercive CVAs or substantively similar agreements ("Class Minors").

- i. H.H. is member of this class.
- ii. Upon information and belief there are in excess of 50 members of this class, one of whom is H.H. The remaining members of this class are currently unknown but will be ascertained through discovery.
- iii. H.H. has a personal interest in the issues of law and fact in this case, including but not limited to:

1. Being unlawfully taken from the lawful custody of her father by CCDSS in violation of his constitutional rights.
 2. Other factual allegations, as set forth *supra*, and claims for relief, as set forth *infra*, all of which are incorporated by reference as though fully set forth herein.
- iv. These issues of fact and law in which H.H. has a personal interest are common with the class.
 - v. These common issues of fact and law predominate over issues affecting only individual class members.
 - vi. With the total number of class members exceeding 50, the class is so numerous that it would be impracticable to bring all class members before the court.
 - vii. H.H. will adequately represent the members of the class.
 - viii. H.H. and the other Class Minors will be represented, upon Court approval, by a qualified Guardian Ad Litem as well as class counsel.

96. The Class Parents and Class Minors have been damaged by:

- a. Class Parents have not been allowed to parent, see, visit, care for, or otherwise interact with their children, unlawfully taken from them by use of the CVAs, POAs or other substantively similar agreements.
- b. Class Parents and Class Minors have endured suffering sadness, pain and emotional distress resulting from the use of the CVAs, POAs or other substantively similar agreements.

- c. Class Parents have been denied the opportunity to provide care, love, and affection to Class Minors .
 - d. Class Minors have lost the services, care, protection, and assistance of Class Parents.
 - e. Class Parents and Class Minors have both been deprived of and have endured lost society, companionship, comfort, guidance, kindly offices, and advice of each other.
 - f. Class Minors have been deprived of medical and other types of care and assistance that CCDSS would have been required to provide under N.C. Gen. Stat. § 7B-100 *et seq.* had the Class Minors been removed from their homes pursuant to law.
97. The parental/familial relationships between Class Parents and Class Minors have been interrupted, damaged, harmed and or destroyed due to the conduct of the Defendant(s).

CLAIMS FOR RELIEF
COUNT I: NEGLIGENCE (against Defendant Lindsay)

98. Plaintiffs adopt and incorporate by reference all allegations of this Complaint as if fully set out herein.
99. Defendant Lindsay has served as CCDSS attorney for a period in excess of 18 years. At all times relevant, Defendant Lindsay was trained in the law as an attorney, licensed to practice law, in North Carolina as authorized by the North Carolina State Bar and specifically as it relates to being a lawyer for a North Carolina Department of Social Services.
100. At all relevant times, Lindsay has improperly and without legal authority prepared CVAs, POAs and similar documents and obtained signatures from parents, either directly

or indirectly, and made misrepresentations to accomplish the purpose of encouraging parents to sign the CVAs, POAs and similar documents for the purpose of removing children from the lawful parent/plaintiff's care, custody, and control.

101. Defendant Lindsay stated to the Court that he had personal knowledge of at least 20 CVAs.

102. Upon information and belief, Defendant Lindsay received, reviewed, and approved from other CCDSS workers dozens, if not hundreds, of CVAs, POAs or other similar documents during his tenure as staff attorney for CCDSS.

103. Upon information and belief, Defendant Lindsay improperly used his position to influence CCDSS to NOT file petitions in regard to abused, neglected, and dependent children of Cherokee County based on personal relationships he had with surrounding family members of either the parents or children.

104. Defendant Lindsay's conduct as set forth above was in violation of the Plaintiffs' constitutional rights.

105. Defendant Lindsay failed to render services and exercise the degree of care and or skill commonly applied and used by other DSS attorneys similarly trained with similar experience that a prudent reputable attorney representing a Department of Social Services would have used when dealing with the plaintiffs and similar circumstances as set forth herein.

106. Defendant Lindsay failed to exercise appropriate professional judgment and engaged in misconduct which is otherwise unreasonable under the circumstances as set forth herein.

107. As a proximate result of Lindsay's negligence, Plaintiffs have suffered damages as set forth and sought herein.

COUNT II: NEGLIGENCE (against Palmer, Supervisors and Social Workers)

- 108.** Plaintiffs adopt and incorporate by reference all allegations of this Complaint as if fully set out herein.
- 109.** At all times relevant to the transactions and occurrences or series of transactions or occurrences giving rise to the complaint, the Defendant Social Workers received the training required by the state to be social workers at the Cherokee Department of Social Services.
- 110.** Upon information and belief, the use of CVAs and POAs and other similar documents by CCDSS was approved of by either official policy, unofficial custom, or constituted an official endorsed or accepted practice of CCDSS.
- 111.** Chapter 7B of the General Statutes clearly states that it “shall be interpreted and construed so as to . . . provide procedures for the hearing of juvenile cases that assure fairness and equity and that *“protect the constitutional rights of juveniles and parents”* N.C. Gen. Stat. § 7B-100(1) (emphasis added).
- 112.** Upon information and belief, when Defendant Lindsay or the Director (at the relevant time) were questioned by social workers, they represented that the use of CVAs, POAs and other similar documents were lawful.
- 113.** Upon information and belief, all Defendants received training from the North Carolina Department of Health and Human Services on the proper procedures for child removal pursuant to N.C. Gen. Stat. § 7B-100 *et. seq.*
- 114.** The Defendants acted with deliberate indifference to such training, the law, the rights of the plaintiffs, and in other ways yet to be discovered through discovery during both the class certification process and discovery on the merits.

115. Upon information and belief, there is a written manual promulgated by NCDHHS setting forth written instructions for county departments of social services on the proper and lawful methods to remove children from their homes pursuant to N.C. Gen. Stat. § 7B-100 *et seq.*

116. On multiple occasions, the CCDSS was audited by the NCDHHS as it related to their files involving the removal of minor children.

- a. Upon information and belief, the CVA and POA process were not discussed with or approved if by NCDHHS or the State of North Carolina.
- b. Upon information and belief, the CVA, POA and other similar documents were not shown or disclosed to the state inspectors.
- c. Upon information and belief, the Defendants hid the CVAs, POAs and other similar documents and the process for obtaining CVAs from the state inspectors from NCDHHS.

117. Defendants negligently used the CVAs, POAs and other similar documents to deprive Plaintiffs of their children.

COUNT III: GROSS NEGLIGENCE (against Lindsay, Palmer, Supervisors and Social Workers)

118. Plaintiffs adopt and incorporate by reference all allegations of this Complaint as if fully set out herein.

119. Defendants', by their conduct as described in this Complaint, acted in reckless disregard of, or wanton indifference to, the rights of the Plaintiffs.

120. Traditionally, gross negligence has been defined as "wanton conduct done with conscious or reckless disregard for the rights and safety of others." *Toomer v. Garrett*, 155 N.C. App.

462, 482, 574 S.E.2d 76, 92 (2002) (quoting *Bullins v. Schmidt*, 322 N.C. 580, 583, 369 S.E.2d 601, 603 (1988)).

121. Defendants' gross and utter failure to take care to follow the constitutional and statutory mandates regarding the removal of children from the home as described throughout this Complaint over a period of many years clearly demonstrates deliberate indifference to the rights of the Plaintiffs and constitutes willful and wanton conduct.

122. As a result of this gross failure to exercise its duty of care, Defendants' use of these CVAs and POAs proximately caused the injuries described in this Complaint.

123. As a result of Cherokee County's conduct, Plaintiffs have suffered damages in excess of \$25,000.00.

124. As a direct or proximate result of Defendants' gross negligence, Plaintiffs have suffered damages in excess of \$25,000.00.

COUNT IV: NEGLIGENT MISREPRESENTATION (against Palmer, Lindsay, Supervisors and Social Workers)

125. Plaintiffs adopt and incorporate by reference all allegations of this Complaint as if fully set out herein.

126. Defendants made statements to Plaintiffs regarding the legality of the CVAs and the impact that signing a CVA would have on them and their children.

127. Defendants made, or caused to be made, material misrepresentations and/or misleading statements to Plaintiffs, as described above. These misrepresentations were made negligently, and without regard for their truth.

128. Defendants intended their misrepresentations to be relied upon by Plaintiffs, and Plaintiffs, in fact, reasonably relied on Defendants' representations in executing the CVAs, POAs or other similar documents.

129. Defendants failed to exercise reasonable care and competence in communicating the material facts to Plaintiffs.
130. Plaintiffs actually and reasonably relied upon the false information and/or material facts not disclosed by Defendants, and Plaintiffs' reliance was justifiable as, under the same or similar circumstances, a reasonable person or party, in the exercise of ordinary care for its own welfare would have either relied on the negligent misrepresentations or would not have discovered them.
131. Plaintiffs' reliance proximately caused them to incur damages.
132. As a result of Defendants' negligent misrepresentations, Plaintiffs have incurred damages and such damages were proximately caused by Defendants' conduct. These proximate injuries would not have occurred if Defendants had not made the omissions or misleading statements to Plaintiffs.
133. As a proximate result of Defendants' conduct, Plaintiffs have suffered damages in excess of \$25,000.00.

COUNT V: NEGLIGENT HIRING AND RETENTION (against Cherokee County)

134. Plaintiffs adopt and incorporate by reference all allegations of this Complaint as if fully set out herein.
135. Defendant Cherokee County owed a duty to its residents and citizens to ensure that its agents and employees acted pursuant to applicable constitutional and statutory mandates.
136. Defendant Cherokee County, either directly by its Board of Commissioners or its agents and employees bearing the authority and responsibility for doing so, had a duty to ensure that the director of social services discharged the director's duties pursuant to applicable constitutional and statutory mandates.

137. At all times relevant, Director Palmer did not have the requisite qualifications to be the Director of Cherokee County Social Services, as set out by the North Carolina Office of State Human Resources.
138. At all times relevant, Director Palmer did not have the training or experience to perform the duties required as a Director of Social Services in North Carolina.
139. Defendant Cherokee County, either directly by its Board of Commissioners or its agents and employees bearing the authority and responsibility for doing so, failed to adequately oversee Defendant Palmer and other Directors of Social Services.
140. The use of unlawful CVAs and POAs and other similar documents has been systemic in CCDSS for many years and over the tenures of multiple directors.
141. At no point during the time that the CVAs and POAs were being used to remove children from the custody of their parents did Defendant Cherokee County, either directly by its Board of Commissioners or its agents and employees bearing the authority and responsibility for doing so, properly determined that CCDSS was using the unlawful agreements and take appropriate steps to correct the unlawful policies and practices of CCDSS, and by so doing and so failing to act, established and caused the implementation of a unlawful and unconstitutional policy, causing harm and damages.
142. As a direct and proximate cause of Cherokee County's negligence, as set forth above, the Plaintiffs have, in fact, suffered damages.
143. Plaintiffs are entitled to recover damages in excess of \$25,000.00 from Cherokee County.

COUNT VI: GROSS NEGLIGENT HIRING AND RETENTION (against Cherokee County)

144. Plaintiffs adopt and incorporate by reference all allegations of this Complaint as if fully set out herein.
145. In addition, or in the alternative, Cherokee County was grossly negligent in its hiring and retention of Palmer. Traditionally, gross negligence has been defined as "wanton conduct done with conscious or reckless disregard for the rights and safety of others." *Toomer v. Garrett*, 155 N.C. App. 462, 482, 574 S.E.2d 76, 92 (2002) (quoting *Bullins v. Schmidt*, 322 N.C. 580, 583, 369 S.E.2d 601, 603 (1988)).
146. Defendant Cherokee County's gross and utter failure to make adequate inquiry into and respond appropriately to the unlawful conduct described throughout this Complaint over a period of many years shows deliberate indifference to the rights of the Plaintiffs and constitutes willful and wanton conduct.
147. As a result of this gross failure to exercise its duty of care, Cherokee County's failure to discharge any DSS Director, including Defendant Palmer, who permitted the use of these CVAs and POAs proximately caused the injuries described in this Complaint.
148. Defendant Cherokee County was grossly negligent in its failure to properly oversee its Department of Social Services.
149. Further, Defendant Cherokee County was deliberately indifferent to the acts, actions or failures to act and to the rights to the named plaintiffs and class plaintiffs.
150. As a result of Cherokee County's conduct, Plaintiffs have suffered damages in excess of \$25,000.00.

COUNT VII: NEGLIGENT SUPERVISION by Defendant Palmer

151. Plaintiffs adopt and incorporate by reference all allegations of this Complaint as if fully set out herein.

152. Chapter 7B of the General Statutes clearly states that it “shall be interpreted and construed so as to . . . provide procedures for the hearing of juvenile cases that assure fairness and equity and that *protect the constitutional rights of juveniles and parents . . .*” N.C. Gen. Stat. § 7B-100(1) (emphasis added).
153. Defendant Palmer had a duty to ensure that she established policies for CCDSS that protected the constitutional rights of juveniles and parents.
154. Defendant Palmer had a duty to supervise the social workers, supervisors, attorney, and other employees of CCDSS to ensure that their actions did not violate the constitutional rights of juveniles and parents.
155. Defendant Palmer had a duty to establish protective services for juveniles alleged to be abused, neglected, or dependent. N.C. Gen. Stat. § 7B-300.
156. Defendant Palmer had a duty to make a prompt and thorough assessment of a complaint that a juvenile within Cherokee County is abused, neglected, or dependent. N.C. Gen. Stat. § 7B-302(a).
157. By law, if in the course of this assessment, Director Palmer determined that removal of the juvenile from the child’s home is necessary for the protection of the juvenile, the Director is required to “sign a petition seeking to invoke the jurisdiction of the court for the juvenile’s protection.” N.C. Gen. Stat. § 302(c).
158. Therefore, as final policy maker and final supervisor over all employees and agents of CCDSS, Defendant Palmer had a duty to ensure that the agents and employees of CCDSS acted pursuant to applicable constitutional and statutory mandates.
159. Defendant Palmer failed to exercise her supervisory authority and thereby breached these duties.

160. Defendant Palmer further failed to make any inquiry into and respond appropriately to the unlawful conduct described throughout this Complaint over a period of many years.
161. Defendant Palmer further failed to supervise her employees to ensure that a petition seeking to invoke the jurisdiction of the juvenile court was filed when removal of a juvenile from his/her home was deemed appropriate for the juvenile's protection.
162. These failures on the part of Defendant Palmer to discharge her duties of care proximately caused the injuries described in this Complaint.
163. Plaintiffs are entitled to recover damages in excess of \$25,000.00.

COUNT VIII: GROSS NEGLIGENT SUPERVISION (against Palmer)

164. Plaintiffs adopt and incorporate by reference all allegations of this Complaint as if fully set out herein.
165. In the alternative, Defendant Palmer's conduct was done in reckless disregard for the rights of the Plaintiffs. Traditionally, gross negligence has been defined as "wanton conduct done with conscious or reckless disregard for the rights and safety of others." *Toomer v. Garrett*, 155 N.C. App. 462, 482, 574 S.E.2d 76, 92 (2002) (quoting *Bullins v. Schmidt*, 322 N.C. 580, 583, 369 S.E.2d 601, 603 (1988)).
166. These gross failures on the part of Defendant Palmer to discharge her duties of care proximately caused the injuries described in this Complaint.
167. Defendant Palmer was grossly negligent in its failure to properly oversee the Department of Social Services
168. As a result of Defendant Palmer's gross negligence, Plaintiffs are entitled to recover damages in excess of \$25,000.00.

COUNT IX: ACTUAL FRAUD (against Lindsay, Palmer, Supervisors and Social Workers)

169. Plaintiffs adopt and incorporate by reference all allegations of this Complaint as if fully set out herein.
170. The statements Defendants made to Hogan and Unnamed Plaintiffs described above regarding the CVA or POA or other similar document were false, misleading, and material at the time they were made.
171. Defendants knew these statements were false at the time they were made.
172. The Defendants made these false statements with the intention that Plaintiffs would rely on these misrepresentations and sign the CVAs and/or POAs.
173. Plaintiffs did, in fact, rely on these false statements when they signed the CVAs and/or POAs.
174. No provision of law exists within the North Carolina General Statutes authorizing CCDSS to draft or otherwise effect the CVA or any substantively similar agreement.
175. The misrepresentations were made willfully and wantonly, and with intention of coercing and/or otherwise deceiving Plaintiffs into abandoning their rights as parents.
176. Defendants' false representations to Plaintiffs were reasonably calculated to deceive. Defendants' false representations were made with the intent to deceive and with the intent to be acted upon.
177. Plaintiffs were, in fact, deceived by Defendants' false representations and acted upon them.
178. Plaintiffs reasonably relied on Defendants' representations in signing the CVAs and/or POAs, as under the same or similar circumstances, a

reasonable person, in the exercise of ordinary care for his own welfare would have relied on the false representations.

179. Defendants have acted intentionally and with malice toward Plaintiffs and/or in reckless disregard of Plaintiffs' rights.

180. The Defendants, at the times relevant, improperly billed either local, state, tribal or federal government funding sources while engaging in the CVA or POA process with the Plaintiff and those similarly situated.

181. Until discovery is conducted, the other Class Parents will not have sufficient information to provide more specific allegations, nor will they have reasonably been expected to discover the deception of CCDSS and its agents and employees.

182. Plaintiffs have suffered damages proximately caused by Defendants' false representations.

183. As a result of Defendants' deceit, fraud and fraudulent inducement, Plaintiffs are entitled to a judgment against Defendants for their damages, which are in excess of \$25,000.00, plus attorneys' fees.

COUNT X: CONSTRUCTIVE FRAUD (against Lindsay, Palmer, Supervisors and Social Workers)

184. Plaintiffs adopt and incorporate by reference all allegations of this Complaint as if fully set out herein.

185. "A constructive fraud claim . . . is based on a confidential relationship rather than a specific misrepresentation. The very nature of constructive fraud defies specific and concise allegations and the particularity requirement may be met by alleging facts and circumstances '(1) which created the relation of trust and confidence, and (2) [which] led up to and surrounded the consummation of the transaction in which defendant is alleged to

have taken advantage of his position of trust to the hurt of plaintiff.’” *Terry v. Terry*, 302 N.C. 77, 85, 273 S.E.2d 674, 678-79 (1981) (quoting *Rhodes v. Jones*, 232 N.C. 548-49, 61 S.E. 2d at 725 (1950)).

186. Upon information and belief, CCDSS and its agents and employees had a relationship of trust and confidence with Plaintiff Hogan and the other Class Parents prior to or during the course of obtaining the Class Parent’s signatures on the CVAs, POAs or substantively similar agreements.

- a. In many instances, the Defendant(s) had prior working history involving the minor children and parents who signed the CVA or POA.
- b. In many instances, the Class Parents were in a position of mental, physical, economic, or emotional vulnerability when they were coerced into giving up their children by and through the use of CCDSS’s CVA or POA.
- c. Upon information and belief, in many instances, the employee/agents of CCDSS when entering into these agreements told the plaintiff/parents, if they didn’t sign the agreement, their children would be sent to foster care, possibly adopted, or removed from to a degree that the plaintiff would never have any kind of contact or ever see their children again.
- d. Once the minor children were removed, there was no follow-up by CCDSS as to the health, well-being or care of the minor child.
- e. There was no follow-up with the parent/plaintiffs to see if there had been any substantive changes in their life or if they had contact of any kind with the minor children.

187. CCDSS and its agents and employees used coercive assertions to Plaintiff Hogan and

other Class Parents in order to obtain signatures on the CVAs, POAs or substantively similar agreements applicable to their children.

188. Plaintiff Hogan and other Class Parents relied on the position of trust and authority occupied by CCDSS its agents and employees when they acquiesced to Defendants' attempts to obtain their signatures on the CVAs, POAs or substantively similar agreements.

189. Plaintiff Hogan, other Class Parents, H.H., and Class Minors were injured as a proximate case of Defendants' conduct.

190. The Defendants at the times relevant unlawfully billed, either local, state, tribal or federal government funding sources while engaging in the CVA or POA process with the Plaintiff and those similarly situated.

191. Until discovery is conducted, the other Class Parents will not have sufficient information to provide more specific allegations, nor will they have reasonably been expected to discover the deception of CCDSS and its agents and employees.

192. Plaintiffs are entitled to recover damages for their injuries from the Defendants in an amount in excess of \$25,000.00.

COUNT XI: Deprivation of Rights 42 U.S.C. § 1983 – Palmer, Lindsay, and Unnamed CCDSS Social Workers and CCDSS Supervisors

193. Plaintiffs adopt and incorporate by reference all allegations of this Complaint as if fully set out herein.

194. Defendant Lindsay, Defendant Palmer, and other unnamed CCDSS Supervisors and CCDSS Social Workers (hereinafter "CCDSS employees") are "persons" as that term is used in 42 U.S.C. § 1983.

195. At all relevant times, CCDSS employees were acting under color of state law.

- 196.** While CVAs were entered into in the course and scope of CCDSS's child welfare, family services, and child protective services efforts, the facilitation of these agreements fall outside the duties and responsibilities of CCDSS and Defendant Lindsay imposed by, *inter alia*, N.C. Gen. Stat. §§ 7B-108A, -108A(14), -108A(18) and other applicable statutes.
- 197.** At no time after the removal of H.H. did Defendant Lindsay, Defendant Palmer, any CCDSS supervisor, or CCDSS social worker or health or community worker review the placement as required by N.C. Gen. Stat. § 7B-100 *et. seq.*, or check on the health, safety, or welfare of the minor child.
- 198.** At all times relevant, Defendant Cherokee County delegated oversight, supervision, policies, and procedures of CCDSS to its directors, who act at the authorization of Cherokee County.
- 199.** Pursuant to N.C. Gen. Stat. § 7B-100 *et. seq.*, Defendant Cindy Palmer was at all times relevant to this complaint, and other directors before her at times referenced herein, the final policy maker with regard to all investigative and placement activities conducted by her staff, subordinates, attorney, and employees.
- 200.** At the times relevant, Defendant Palmer and other directors similarly situated were acting under the color of state law in her and their individual and official capacity.
- 201.** At the times relevant, the supervisors of CCDSS were acting under color of state law in their individual and official capacity.
- 202.** At the times relevant, the social workers of CCDSS were acting under color of state law in their individual and official capacities.
- 203.** At the times relevant, Defendant Lindsay was acting under color of state law in his individual and official capacities.

- 204.** At the times relevant, unknown defendant directors, supervisors, and social workers, staff employees and health and community workers were engaged in conduct and activities in their individual and official capacities under the color of state law.
- 205.** At the times relevant, the defendant directors, supervisors, social workers, staff employees, health and community workers and Defendant Lindsay were acting within the scope of their employment.
- 206.** Plaintiffs have a constitutionally protected liberty interest and right to custody of H.H. See e.g., *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000) (“The liberty interest at issue in this case -- the interest of parents in the care, custody, and control of their children -- is perhaps the oldest of the fundamental liberty interests recognized by [the United States Supreme] Court.”); *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923), (“[T]he ‘liberty’ protected by the Due Process Clause includes the right of parents to ‘establish a home and bring up children’ and ‘to control the education of their own.’”); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535 (1925) (“[T]he ‘liberty of parents and guardians’ includes the right ‘to direct the upbringing and education of children under their control’; . . . “the child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”); *Prince v. Massachusetts*, 321 U.S. 158 (1944), (“It is cardinal . . . that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.”); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (“The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now

established beyond debate as an enduring American tradition”); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (“[T]he relationship between parent and child is constitutionally protected”); *Parham v. J. R.*, 442 U.S. 584, 602 (1979) (The United State Supreme Court’s “jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. [Its] cases have consistently followed that course”); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (discussing “the fundamental liberty interest of natural parents in the care, custody, and management of their child”); and *Troxel*, at 66 (“In light of . . . extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.”)

207. Parents have a right under the Constitution of the United States, the Constitution of North Carolina, and the laws of the United States and North Carolina to live with their children free from involvement of CCDSS, absent proof by clear, cogent and convincing evidence of abuse, neglect, or dependency being produced in a court of law.

208. Children have a right under the Constitution of the United States, the Constitution of North Carolina, and the laws of the United States and North Carolina to live with their parent or parents free from involvement of CCDSS, absent proof by clear, cogent and convincing evidence of abuse, neglect, or dependency being produced in a court of law.

209. Children and parents (the named Plaintiffs and class Plaintiffs) have the right to live together as a family without government interference.

- 210.** The only way a social worker, agent or the Director of a DSS may lawfully remove a child under North Carolina law is by clear, cogent and convincing evidence based on allegations of abuse, neglect or dependency.
- 211.** Only a Court Order, arising from due deliberation, duly signed by a Judge, and filed with the Court, can be used to interfere, interrupt or prevent the relationship between a parent and a child (the named Plaintiffs and class Plaintiffs).
- 212.** No judicial authorization ever occurred for this or any other CVA as it relates to the allegations as set forth herein, which removed a child from their parent (the named Plaintiffs and class Plaintiffs).
- 213.** Neither named Plaintiff nor any class Plaintiff was informed of the harm which would result from the execution of such documents as CVAs and POAs, and instead relied upon the representations of CCDSS and its agents and employees, who withheld such information, to the detriment of the named Plaintiff or class Plaintiff.
- 214.** No emergency was ever alleged in a single CVA or POA or similar document.
- 215.** No statement was ever alleged in a single CVA, POA or similar document, that a child was abused, neglected or dependent as defined and required by law.
- 216.** No statement was ever alleged in a single CVA, POA or similar document, that a child was exposed to a substantial risk of bodily injury or harm.
- 217.** No statement was ever alleged in a single CVA, POA or similar document, that a child would be removed from the jurisdiction of the Court.
- 218.** No statement was ever alleged in a single CVA, POA or similar document, as it relates to a child being covered by the Indian Child Welfare Act, even when it was necessary to do so.

219. At the times relevant, the Defendants failed to represent the laws and facts, as set forth herein, to the plaintiff parents, accurately, during the process that resulted in the removal of the minor children from their parents (the plaintiffs).
220. At the times relevant, the Defendants, as set forth herein, lacked any legal right to remove these minor children from their parents.
221. At the times relevant, there existed no legal authority for the Defendants to remove the minor children from their parents.
222. At no time relevant to the allegations herein, did the Defendants ever attempt to establish or work a safety plan with these parents for these children after the CVA, POA or similar document was signed and the children were removed from their parents.
223. At the times relevant, none of these parents were ever noticed or provided a pre-deprivation hearing as required by North Carolina law or by any process otherwise due.
224. At no relevant time were Class Parents provided counsel as required by North Carolina law.
225. At no relevant time were Class Minors provided counsel, the appointment of a guardian *ad litem*, or an attorney for a guardian *ad litem* as required by North Carolina law.
226. The minor children plaintiffs in this case, individually and as a class, based on the allegations as set forth herein, make the following claims against the named defendants, their predecessors, successors and those yet to be known and or named through the discovery process.
227. At the times relevant, not one Plaintiff was ever allowed or provided a post-deprivation hearing as it relates to the allegations as set forth herein.

228. The conduct on behalf of the Defendants towards the Plaintiffs shocks the conscience and at no time relevant is supported in law or fact.
229. The right to parent one's child is enshrined in the Due Process Clause of the 14th Amendment to the Constitution of the United States and the Law of the Land Clause in Article I, Section 19 of the North Carolina Constitution.
230. The Defendants' conduct violated clearly established constitutional rights of the named Plaintiffs, class Plaintiffs, and those yet to be determined through discovery. These rights were clearly established at the time these violations occurred.
231. Defendants' actions deprived both Plaintiffs of their constitutional rights and violated their rights to both procedural and substantive due process.
232. The actions of the CCDSS employees resulted in an unlawful seizure of H.H. in violation of the Fourth Amendment to the Constitution of the United States.
233. The actions of the CCDSS employees unlawfully deprived Hogan and H.H. of their respective freedom to associate with each other in violation of the First Amendment to the Constitution of the United States.
234. The actions of the CCDSS employees deprived Plaintiffs of procedural due process by interfering with their right to freedom of association in violation of his rights under the First Amendment to the Constitution of the United States.
235. The actions of the CCDSS employees deprived Plaintiffs of procedural due process by not providing a prompt and fair post-deprivation judicial review in violation of Plaintiffs' rights under the Fourteenth Amendment to the Constitution of the United States.
236. The actions of the CCDSS employees were made with deliberate indifference and deprived Plaintiffs of substantive due process in that they shock the conscience of the

Court. The use of CVAs POAs and substantively similar agreements were intended to and did allow CCDSS and its agents and employees to evade judicial review of their coercive and unlawful action and separate parents from their children without lawful authority. These actions by the CCDSS employees violated Plaintiffs' rights to substantive due process in violation of the Fourteenth Amendment of the Constitution of the United States.

237. Defendants each engaged in conduct in furtherance of the object of this conspiracy and induced others to engage in conduct in furtherance of those conspiracies.

238. Defendants engaged in such conduct in bad faith and with intentionally, recklessly, and with callous disregard for, and deliberate indifference to Plaintiffs' rights.

239. As a direct and foreseeable consequence of this deprivation:

- a.** Plaintiff Hogan and H.H. were separated in excess of 180 days. As a direct and foreseeable consequence of this conduct, Plaintiff Hogan and H.H. suffered pain and suffering, emotional trauma and distress, mental anguish, and Hogan was prevented from providing for the care, custody, and control of H.H. during a valuable and critical time of minor child's formative years.
- b.** Class Parents and Class Minors suffered substantially similar injuries when they were separated for various periods of time.

240. The CVA was unlawful and obtained in violation of Hogan's federally and state law protected rights particularly those under the U.S. Constitution, North Carolina Constitution, and North Carolina General Statutes in many ways, including but not limited to:

- a. The agreement is not permitted by, did not comply with, and is contrary to the provisions of N.C. Gen. Stat. § 7B-100 *et. seq.*, of the North Carolina General Statutes because, *inter alia*:
 - i. The agreement did not allow Plaintiff specified minimum visitation with the minor child, in violation of N.C. Gen. Stat. § 7B-905.1.
 - ii. The agreement failed to follow the mandate of N.C. Gen. Stat. § 7B-507(a), which provides that any order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services (whether it is an Order for nonsecure custody, continued nonsecure custody, a dispositional Order, or a review Order):
 - 1. Shall contain a finding the juvenile's removal or continuation in or return to the juvenile's home would be contrary to the juvenile's best interest;
 - 2. Shall contain findings as to whether the county department of social services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined that such efforts are not required and shall cease;
 - 3. Shall contain findings as to whether a county department of social services should continue to make reasonable efforts to prevent or eliminate the need for placement of the juvenile;

4. Shall specify that the juvenile's placement and care the responsibility of the county department of social services and that the agency is to provide or arrange for the foster care or other placement of the juvenile; and
 5. May provide for services or other efforts aimed at returning the juvenile to a safe home or at achieving another permanent plan for the juvenile.
- iii. The agreement is unauthorized by N.C. Gen. Stat. § 7B-100 *et. seq.*, which does not authorize CCDSS to enter into private custody agreements, powers of attorneys, file private custody actions, or take any actions regarding custody of a minor child without judicial action.
1. These CVAs and POAs are more similar to a private parental custody agreement than a custody order entered under the authority of N.C. Gen. Stat. § 7B-100 *et. seq.*,
 2. These CVAs and POAs, while similar to a private parental custody agreement, are not authorized under N.C. Gen. Stat § 50-13.1 *et seq.* or N.C. Gen. Stat § 50A-101 *et seq.*,
 3. These CVAs and POAs, though appearing to be similar to a private parental custody agreement, are prohibited by law.
- iv. Under N.C. Gen. Stat § 7B-905(b), a dispositional order under which a juvenile is removed from the custody of a parent, guardian, custodian, or caretaker shall direct that a review hearing (as required by N.C Gen. Stat § 7B-906) be held with 90 days from the date of the dispositional hearing.

- v. It was not executed under the supervision of the District Court of Cherokee County, North Carolina, which possesses original and exclusive jurisdiction over all juveniles alleged to be abused, neglected, dependent, undisciplined, or delinquent within the County. See N.C. Gen. Stat. § 7B-200, 7B-1600, and 7B-1601.
 - vi. It was not executed under the supervision of the District Court of Cherokee County, North Carolina, which possesses original and exclusive jurisdiction over all child custody actions. See N.C. Gen. Stat. § 50A-201(b) and N.C. Gen. Stat § Chapter 50-13.1 *et seq.*,
 - vii. It was not reviewed by a court official or guardian ad litem for the minor child, and was not filed in the minor child's juvenile action court file (Cherokee County 15-JA-73).
 - viii. North Carolina District Court has the original and exclusive jurisdiction over all matters regarding all minor children within the state (excluding adoptions).
- b. The CVA failed to follow the North Carolina Rules of Practice and Rules of Civil Procedure by *inter alia*:
- i. It was not signed by a Judge or filed with the Cherokee County Clerk of Court's office.
 - ii. CCDSS did not file any motion, notice on for hearing, or in any other way bring before or otherwise seek court approval or oversight in entering into the CVAs as are material herein.

- c. The execution of the CVA was lacking in any legal safeguards for the rights of Hogan or H.H. as required by N.C. Gen. Stat. § 7B-100 *et. seq.*, and the Constitutions of the United States and the State of North Carolina.
 - d. CCDSS and its employees and agents were aware of Judge Sellers' Order entered during *In re H.H.* (entered with the consent of CCDSS), which had already established the court's jurisdiction over H.H., Hogan, and resolved the issue of H.H.'s custody.
 - e. The CVA contained no provisions to revoke or otherwise modify the terms contained therein and contained no provision to allow judicial review or ratification at any time.
 - f. The CVA was used to deprive Hogan and the child of the right to procedural due process and substantive due process.
 - g. Other ways that shall be ascertained through discovery and proven at trial.
- 241.** Defendants represented to Plaintiffs and Plaintiffs in reasonable reliance on Defendants' representations believed the CVAs and POAs were binding legal documents with the same force and effect as an order of the Court, based on the representations of CCDSS.
- 242.** The CVA was drafted and formatted in such a manner as to resemble a Court Order.
- 243.** Defendant Palmer and others who were in the position to establish and promulgate the policies and official practices of CCDSS were aware of, approved, and directed the use of the CVA and substantively similar "agreements."
- 244.** Defendant Lindsay drafted multiple CVAs and POAs involving many parents and children over the course of multiple years.

- a. The CVAs were prepared, propagated, and produced by CCDSS based upon Defendant Lindsay's advice, drafting, and/or counsel. The CVA was designed to be a bilateral "agreement" requiring the signatures of both the parents and the recipient adults.
- b. Upon information and belief, Defendant Lindsay, Defendant Palmer, CCDSS and or Cherokee County are in possession of electronic copies of many, if not all, of the CVAs and POAs and substantively similar agreements utilized by the Defendants in their official policy, practice, and custom of using unlawful coercion and "agreements" to coerce parents into "surrendering" custody of their minor children in derogation of the parents' rights and privileges under the Constitutions of the United States and North Carolina.
 - i. All named and unnamed social workers and social worker supervisors were agents, employees, servants, and health and community workers of Cherokee County and CCDSS, and CCDSS is liable for their tortious actions particularly in light of the deliberate indifference of Cherokee county, CCDSS, its employees, its agents and other defendants yet to be determined through the discovery process.
 - ii. CCDSS, its director and policy makers are liable for the direct activity and actions of the DSS and it officials and employees through their individual acts and actions, as well as the policies and *de facto* policies.
 - iii. These unlawful "agreements" were crafted and utilized to unlawfully take minor children from the custody of their parents with the knowledge and approval of the CCDSS director or Defendant Lindsay or both.

c. In addition to the CVAs, Defendant Lindsay and Defendant Palmer and prior directors unlawfully utilized what they described as “Powers of Attorney” (“POA”) to also remove children from the custody of their parents.

i. A POA was used to unilaterally remove a child from the custody of a parent without court oversight or approval.

ii. Use of a POA to remove a child from his/her parent violated same rights as the use of a CVA.

iii. Upon information and belief, CCDSS and its agents and employees made material misrepresentations to parents to induce them to sign POAs.

iv. Upon information and belief, parents executed POAs acting in reliance on the false statements of CCDSS and its agents and employees.

245. The named defendants combined, confederated, and agreed to act in conformity with their unlawful patterns, customs, and policies. Each member of the conspiracy shared the same conspiratorial objective to deprive the Plaintiffs of their federally protected rights resulting in the harm and damages that the plaintiffs have incurred.

246. As a result of Defendants’ conduct, Plaintiffs have been damaged in excess of \$25,000.00.

COUNT XII: Deprivation of Rights 42 U.S.C. § 1983 Cherokee County and CCDSS
(Monnell v. Dep’t of Social Services, 436 U.S. 658)

247. Plaintiffs adopt and incorporate by reference all allegations of this Complaint as if fully set out herein.

248. CCDSS is a department of Cherokee County. Cherokee County is governed by a Board of Commissioners, who have oversight over all county programs and departments.

249. The Director of CCDSS, pursuant to N.C. Gen. Stat. § 7B-100 *et. seq.*, is the final policymaker for all policies and procedures established to govern the operations and activities of CCDSS, a power granted to the Director by Cherokee County.
250. Defendant Palmer is the current Director of CCDSS.
251. The named Defendants, as well as unnamed and other as yet unknown supervisors, directors, policymakers, and other responsible individuals are “persons” as defined pursuant to 42 U.S.C. §1983 and *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 98 S. Ct. 2018 (1978), and its progeny.
252. Defendant Lindsay was at the relevant times simultaneously the attorney contracted and hired to represent CCDSS in juvenile court proceedings as well as the attorney for Cherokee County. Defendant Lindsay was also an advisor to employees of CCDSS, including its directors. Defendant Lindsay was also a policymaker for CCDSS.
253. Defendants Lindsay and Palmer established as official policy or custom the use of CVAs, POAs or substantively similar agreements to coerce parents to surrender custody of their children in violation of their rights under the First, Fourth and Fourteenth Amendments to the Constitution of the United States (*see* Count 1, *supra*).
254. The fundamental right to familial relations is constitutionally protected.
255. Cherokee County, by and through its final policy maker, maintained a policy, custom, or pattern of practice of promoting, facilitating, and condoning the improper, illegal, and unconstitutional techniques by CCDSS social workers and other CCDSS employees and Defendant Lindsay
256. Cherokee County further demonstrated deliberate indifference to the unlawful, unconstitutional, and unconscionable actions of their delegated policymakers, and further

failed to adequately train, supervise, or discipline the Defendants as set forth herein in connection with protecting and ensuring the constitutional rights of the Plaintiffs and minor children.

257. Because the County Commissioners of Cherokee County and/or the Director of CCDSS and/or Defendant Scott Lindsay were the final policy makers during the past 19 years, their acts or omissions during that time constituted the policy, custom, or pattern and practice of CCDSS.

258. As the final policymaker for CCDSS, the County Commissioners of Cherokee County and/or the Director of CCDSS and/or Defendant Lindsay created, promulgated, and maintained the following policies, customs, or patterns and practices which deprived all class plaintiffs, including Plaintiff Hogan and H.H., of their constitutionally protected rights by:

- a. Failing to properly train and supervise CCDSS social workers and employees with regard to their duties not to (1) fabricate purportedly legal documents, (2) coerce signatures from plaintiffs whereby they gave up their right to parent, (3) separate a parent from a child, (4) remove a child from his/her family, (5) conceal the CVA process from NCDHSS auditors, (6) intentionally and recklessly failed to follow the procedures as set forth in N.C. Gen. Stat. § 7B-100 *et. seq.*, (7) ignore the policies and guidelines as set forth by NCDHHS as it relates to safety plans, removal procedures, maintaining contact between parents and children, providing a reunification plan for parents and children and following up on placement of the minor children to ensure their safety, health and essential needs are being

adequately met. Upon information and belief the defendants made factually inaccurate statements to the affected minor children.

- b. Encouraging, promoting and condoning CCDSS social workers to (1) fabricate purportedly legal documents, (2) coerce signatures from plaintiffs whereby they gave up their right to parent, (3) separate a parent from a child, (4) remove a child from his/her family, (5) conceal the CVA, POA and similar processes from NCDHSS auditors. (6) intentionally and recklessly failed to follow the procedures as set forth in N.C. Gen. Stat. § 7B-100 *et. seq.*, (7) ignore the policies and guidelines as set forth by NCDHHS as it relates to safety plans, removal procedures, maintaining contact between parents and children, providing a reunification plan for parents and children and following up on placement of the minor children to ensure their safety, health and essential needs are being adequately met; (8) fostering a climate of impunity for engaging in such unconstitutional conduct.
- c. Creating, promulgating, and maintain a policy, custom, or pattern of practice of failing to follow the law as set forth in N.C. Gen. Stat. § 7B-100 *et. seq.*, the policies, procedures and guidelines as set forth by NCDHHS and other behaviors, conduct or practices to be learned through discovery and proved at trial.

259. The wrongful acts and omissions that deprived Plaintiff Hogan of custody of his child and his right to parent occurred pursuant to Cherokee County and CCDSS's policies, customs, patterns, practices and conduct.

260. The policies, practices, customs and patterns of conduct of CCDSS and that of Cherokee County were the direct and proximate cause of all class plaintiffs, including Hogan, being

unable to act as a parent to his child, associate with his child or enjoy his constitutionally protected rights accordingly.

COUNT XIII: 42 U.S.C. § 1983 - Violation of Equal Protection

261. Plaintiffs adopt and incorporate by reference all allegations of this Complaint as if fully set out herein.

262. The Defendants only utilized the practice of coercing parents into signing CVAs, POAs or substantively similar agreements in some cases. In others, CCDSS elected to file petitions in accordance with N.C. Gen. Stat. § 7B-100 *et. seq.*, of the North Carolina General Statutes.

263. There is no rational basis for the arbitrary and capricious decision to afford the protections of due process to some individuals while ignoring them for others.

264. Therefore, the decision to utilize the CVAs, POAs and similar agreements against one group of people and not others is in violation of the Equal Protection Clause of the Fourteenth Amendment to United States Constitution.

265. Therefore, each Class Parent and Class Minor that was harmed by use of the CVAs or substantively similar agreements was also denied equal protection under the law.

266. Upon information and belief, the CCDSS Director or Defendant Lindsay were the ultimate determiner/authority as it related to which plaintiff and child were coerced to use the CVA and POA processes and which families were allowed their constitutionally protected rights.

267. As a result of Defendants' conduct, Plaintiffs have suffered damages in excess of \$25,000.00.

COUNT XIV: Respondeat Superior

- 268.** Plaintiffs adopt and incorporate by reference all allegations of this Complaint as if fully set out herein.
- 269.** Liability for the tortuous conduct and constitutional violations by the Defendants in their individual and professional capacity are imputed to Cherokee County, a governmental subdivision of the state of North Carolina, by operation of the doctrine of respondeat superior.
- 270.** The conduct of Defendants Palmer, Lindsay, and all unnamed prior DSS directors, DSS Supervisors and DSS Social Workers, in their individual and official capacities, was within the scope of their employment with Cherokee County government and CCDSS and in the furtherance of Cherokee County and CCDSS.
- 271.** The defendants owed a statutory duty to the plaintiffs to follow state law, act consistent with state policies, and not act in ways so as to infringe upon the rights and privileges of parents and minor children under the Constitutions of the United States and the State of North Carolina.
- 272.** Defendants Palmer, Lindsay, and all unnamed prior DSS directors, DSS Supervisors and DSS Social Workers breached that duty when by presenting the CVA to Plaintiffs coercing them to sign.
- 273.** Defendants Palmer, Lindsay, and all unnamed prior DSS directors, DSS Supervisors and DSS Social Workers breached that duty when by presenting CVAs, POAs and substantively similar agreements to Class Parents and coercing them to sign.
- 274.** The use of the unlawful CVAs, POAs and substantively similar agreements interrupted, interfered with, and destroyed the parental relationship and bond of that between Hogan and H.H. as well as between other Class Parents and Class Minors, and caused irreparable

harm, emotional distress, mental anguish and damages yet to be determined.

275. All named and unnamed plaintiffs suffered damage and irreparable harm by the acts, conduct and results of the defendants in that their families were torn apart, the relationship between their siblings, parents and family were damaged or destroyed resulting in emotional trauma, pain and suffering.

276. Plaintiffs are entitled to recover damages from Defendants in excess of \$25,000.00.

COUNT XV: Civil Obstruction of Justice

277. Plaintiffs adopt and incorporate by reference all allegations of this Complaint as if fully set out herein.

278. Defendants intentionally, willfully, and maliciously engaged in an unlawful pattern of conduct by coercing Class Parents into signing CVAs or substantively similar agreements.

279. Defendants further used the CVAs or substantively similar agreements to avoid judicial supervision and oversight of their unlawful activities and to deny the right of the plaintiffs to access to justice and the right to open courts.

280. Defendants thereby obstructed the administration of public and legal justice by means of their unlawful actions as described throughout this Complaint.

281. Further, despite being under a statutory mandate to preserve all records of child protective services cases, CCDSS, its agents, and employees destroyed or knowingly permitted the destruction of records pertaining to child protective services cases, including case file containing copies of CVAs, POAs, and substantively similar agreements. This destruction has hindered, obstructed, and delayed the ability of counsel to identify the victims of CCDSS's wrongdoing, and file this action.

282. Class Parents and Class Minors were harmed by the unlawful actions taken by the

Defendants in their attempt to obstruct justice as set forth elsewhere in the Complaint.

283. As a result of Defendants' conduct, Plaintiffs are entitled to recover damages in excess of \$25,000.00.

COUNT XVI: Violations Under the North Carolina Constitution

284. Plaintiffs adopt and incorporate by reference all allegations of this Complaint as if fully set out herein.

285. The Fourteenth Amendment to the Constitution of the United States provides that no person shall be "deprive[d] . . . of life, liberty, or property, without due process of law" Article I, Section 19 of the North Carolina Constitution states that "[n]o person shall be . . . or in any manner deprived of his life, liberty, or property, but by the law of the land."

286. In *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000), the United States Supreme Court held that "[i]n light of . . . extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children."

287. To ensure that all parents enjoy the protections of due process in any case where DSS seeks to remove a child from his or her parent, the North Carolina General Assembly has enacted N.C. Gen. Stat. § 7B-100 *et. seq.*, of the North Carolina General Statutes to govern all proceedings in which a juvenile is alleged to be abused, neglected, or dependent.

288. It is beyond dispute that one of the fundamental rights enjoyed by all parents under the United States Constitution is the right to raise their children without government interference. *See e.g. Troxel v. Granville*, 530 U.S. 57, 65-66 (2000) ("The liberty interest

at issue in this case -- the interest of parents in the care, custody, and control of their children -- is perhaps the oldest of the fundamental liberty interests recognized by [the United States Supreme] Court.”); *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923), (“[T]he ‘liberty’ protected by the Due Process Clause includes the right of parents to ‘establish a home and bring up children’ and ‘to control the education of their own.’”); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535 (1925), (“[T]he ‘liberty of parents and guardians’ includes the right ‘to direct the upbringing and education of children under their control’ ; . . . “the child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”); *Prince v. Massachusetts*, 321 U.S. 158 (1944), (“It is cardinal . . . that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.”); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (“The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition”); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (“[T]he relationship between parent and child is constitutionally protected”); *Parham v. J. R.*, 442 U.S. 584, 602 (1979) (The United State Supreme Court’s “jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. [Its] cases have consistently followed that course”); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (discussing “the fundamental liberty interest of natural parents in the care, custody, and management of their child”); and *Troxel*, at 66 (“In light of . . . extensive precedent, it

cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.”)

289. The same protection is extended to the people of North Carolina by Article 1, Section 19 of the North Carolina Constitution and is fundamentally required under Article I, section 35 of the North Carolina Constitution.

290. The term "law of the land" as used in Article I, Section 19 of the North Carolina Constitution means the general law, the law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. It means the regular course of the administration of justice through the courts of competent jurisdiction, after the manner of such courts. Procedure must be consistent with the fundamental principles of liberty and justice. *State v. Chesson*, 228 N.C. 259, 45 S.E.2d 563 (1947), *writ dismissed*, 334 U.S. 806, 68 S. Ct. 1185, 92 L. Ed. 1739 (1948). *See also, Eason v. Spence*, 232 N.C. 579, 61 S.E.2d 717 (1950). Among other things, "the law of the land" or "due process of law" imports both notice and the opportunity to be heard before a competent tribunal. *Parker v. Stewart*, 29 N.C. App. 747, 225 S.E.2d 632 (1976); *Utica Mut. Ins. Co. v. Johnson*, 41 N.C. App. 299, 254 S.E.2d 643 (1979).

291. Moreover, the North Carolina “Supreme Court has held that the term ‘law of the land,’ as used in Article I, Section 19 of the North Carolina Constitution, is synonymous with ‘due process of law’ as that term is applied under the Fourteenth Amendment to the United States Constitution. *In re Petition of Smith*, 82 N.C. App. 107, 109, 345 S.E.2d 423, 425 (1986) (quoting *In re Moore*, 289 N.C. 95, 221 S.E. 2d 307 (1976)). *Also see State v. Smith*, 90 N.C. App. 161, 368 S.E.2d 33 (1988), *aff’d*, 323 N.C. 703, 374 S.E.2d 866, *cert.*

denied, 490 U.S. 1100, 109 S. Ct. 2453, 104 L. Ed. 2d 1007 (1989); and *McNeill v. Harnett County*, 327 N.C. 552, 398 S.E.2d 475 (1990).

292. The General Assembly has clearly states that the DSS Code “shall be interpreted and construed so as to . . . provide procedures for the hearing of juvenile cases that assure fairness and equity and that *protect the constitutional rights of juveniles and parents . . .*” N.C. Gen. Stat. § 7B-100(1) (emphasis added).

293. Complying with the DSS Code by the State and CCDSS is the means by which the constitutional rights described above are protected.

294. There is no provision of law permitting the use of extrajudicial CVAs to obtain the voluntary surrender of parental custody.

295. Therefore, the use of CVAs, POAs, and other substantively similar documents and agreements by each and every Defendant violated the rights of Plaintiff Hogan and the Class Parents held under Article I, Section 19 of the North Carolina Constitution.

296. As a result of Defendants’ violations of the North Carolina Constitution, Plaintiffs have suffered damages in excess of \$25,000.00.

COUNT XVII: Punitive Damages and Attorney’s Fees

297. Plaintiffs adopt and incorporate by reference all allegations of this Complaint as if fully set out herein.

298. Defendants, in each claim for relief, by their actions as set forth in this Complaint, have acted intentionally, willfully, wantonly, and maliciously in causing the injuries complained of.

299. By their intentional, willful, wanton, and malicious behavior, Defendants have caused injuries to Class Parents as set forth elsewhere in this Complaint, including:

- a. Violating their rights under the Constitutions of the United States and North Carolina;
- b. Defrauding them;
- c. Obstructing justice and denying them access to juvenile court;
- d. Damage to the safety, well-being, mental health, and familial cohesiveness of the Class Parents, Class Minors, and all affected families of Cherokee County, North Carolina, including the plaintiff Hogan who was separated from H.H. for a period in excess of 180 days.
- e. As a direct and foreseeable consequence of Defendants' conduct, Plaintiff Hogan and the Class Parents suffered pain and suffering, mental anguish, emotional trauma and distress, and were prevented from providing for the care, custody, and control of their minor children during valuable and critical times of minor children's formative years.
- f. As a direct and foreseeable consequence of Defendants' conduct, the H.H. and Class Minors suffered pain and suffering, mental anguish, emotional trauma and distress from being removed from their parents.

300. The intentional, willful, wanton, malicious and oppressive conduct of the defendant are the proximate cause of injuries sustained by the Plaintiffs. As a result, the Class Parents and Plaintiff Hogan are entitled to punitive damages.

301. Plaintiffs are entitled to an award of attorney's fees pursuant to 42 U.S.C. § 1988(b) and other applicable federal and state statutes covering the allegations as set forth herein.

WHEREFORE the Plaintiffs pray the Court and demand judgment:

1. For an order certifying the proposed class, and any subclasses the Court finds to be necessary, pursuant to N.C.R. Civ. P. 23, designating the Plaintiff Hogan as the named representative of the Class Parents, designating H.H. as the named representative of the Class Minors, and designating the undersigned as class counsel;
2. For an award to named Plaintiffs and class Plaintiffs for damages, including but not limited to pain and suffering, nominal, compensatory, consequential, punitive and other such damage, as well as interest thereon for some or all, in an amount proven to be determined at trial, duly entitled to the named and class plaintiffs and class based upon the claims and allegations as set forth within this Complaint with pre and post judgment interest;
3. For Damages in excess of \$25,000 per claim to each plaintiff as allowed by law with pre and post judgment interest.
4. For prejudgment and post-judgment interest as allowed by law.
5. For an award of attorney's fees and costs as allowable by all applicable laws;
6. For a trial by jury; and
7. For such other and further relief as the Court may deem just and proper.

THIS the _____ day of March, 2018.

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